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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/772,128

02/04/2004

Steven F. Seyer

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WRIGHT MEDICAL TECHNOLOGY, INC.
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EXAMINER

SCHILLINGER, ANN M

ART UNIT

PAPER NUMBER

3738

MAIL DATE

DELIVERY MODE

09/20/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/772,128

Applicant(s)

SEYER ET AL.

Examiner

Ann Schillinger

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4,6 and 9-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,2 and 10-21 is/are allowed.
- 6) ☒ Claim(s) 4,6 and 9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Allowable Subject Matter

Claims 1, 2, and 10-21 are allowed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 6, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilbert et al. in view of Duncan et al. (U.S. Pat. No. 5,133,771). Gilbert et al. discloses the invention substantially as claimed. Gilbert discloses the following: an acetabular component (12) for releasable engagement with locking structure of an insertion and extraction tool (14, 32), the locking structure having at least one foot (46) and an adjacent locking finger (48), comprising a thin-walled, unitary, partial spherical body (see element 12's shape in Figure 1) having a peripheral end surface (see Attachment A), an inner surface (16) circumscribed by said peripheral end surface and defining an articular surface (28) for a femoral head, an outer surface (22), and a plurality of angled recesses (24, 26) along said outer surface (see Figure 1), said recesses having entry portions (24) along said peripheral end surface for the locking structure of the insertion and extraction tool, said entry portion leading into an engagement portion (26) angled from said entry portion, each said recess having an open outer periphery (see Attachment A) extending from said entry portion to said engagement portion (see Figure 1). However,

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Gilbert et al. does not disclose the specific thickness of the acetabular cup. Duncan et al. teaches the specific thickness of the acetabular cup as being between 3-6 mm in col. 5, line 54 through col. 6, line 14 for the purpose of incorporating a thickness range that will typically optimize the amount of adhesive needed for the prosthetic and minimize the amount of hardware for the average patient. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to specify the thickness of the acetabular cup as being between 3-6 mm in order to incorporate a thickness range that will optimize the amount of adhesive needed for the prosthetic and minimize the amount of hardware.

Gilbert et al. discloses the following of claim 6: the acetabular component for releasable engagement with locking structure of an insertion and extraction tool as recited in claim 4, wherein each said recess is sized such that when said foot is in said recess, an outer edge of said foot substantially matches said outer surface along said open outer periphery of said recess (see Figures 3-6).

Gilbert et al. discloses the limitations of claim 9 as shown in Figure 1.

Response to Arguments

In view of the amendments to claims 2 and 5-21 the objections to the claims are withdrawn.

Applicant's arguments filed 7/3/2007 have been fully considered but they are not persuasive. Regarding claim 4, the Applicant contends that the Duncan et al. reference cannot be used with the Gilbert reference to teach the specific thicknesses of the acetabular component because the Duncan et al. reference addresses a temporary component. However, the Applicant's claims do not state that the acetabular component must be temporary, and the

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Duncan et al. reference shows that it is known in the art to use these dimensions even if it may be for a different purpose. *In re Lintner*, 173 USPQ 560. In addition, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use these thickness values, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Schillinger whose telephone number is (571) 272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 4 p.m..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ann Schillinger
September 9, 2007

A. Stewart
ALVIN J. STEWART
PRIMARY EXAMINER